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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re A.M., et al., Persons Coming Under
the Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

S.L. et al.,

Defendants and Appellants.

E071128

(Super.Ct.Nos. J277041, J277042
& J277043)

OPINION

APPEAL from the Superior Court of San Bernardino County. Erin K. Alexander,
Judge. Reversed with directions.

Roni Keller, under appointment by the Court of Appeal, for Defendant and
Appellant, S.L.

Jack A. Love, under appointment by the Court of Appeal, for Defendant and
Appellant, M.M.

Michelle D. Blakemore, County Counsel, Svetlana Kauper, Deputy County Counsel, for Plaintiff and Respondent.

Appellants S.L. (mother) and M.M. (father) appeal from a San Bernardino County juvenile court's order transferring a dependency case regarding A.M., S.K., and F.K. (the children) back to another county.¹ Mother and father have filed separate appeals, but also join in each other's arguments. We vacate the court's order.

PROCEDURAL BACKGROUND

On July 12, 2018, the Sonoma County Juvenile Court (the Sonoma court) held a hearing, and after considering a social worker's report, ordered the transfer of the dependency case concerning the children to San Bernardino County. A transfer-in hearing was set for July 23, 2018.

On July 23, 2018, the San Bernardino County Juvenile Court (the court) held the transfer-in hearing. At the outset, the court noted there was a request to continue the matter in order to verify the addresses of mother and father (the parents). The court stated, "I'm inclined to accept the transfer in. Set it as a further transfer in until the addresses are fully verified." The court set a "further transfer" hearing for August 15, 2018.

On August 14, 2018, a San Bernardino County Inter-County Transfer Coordinator filed a section 388 petition asking the court to change the Sonoma court transfer order (the petition). The petition recommended that the court accept the transfer, but

¹ Father is the father of A.M. only.

immediately return the case to the Sonoma court. The petition alleged that, even though it was verified that both parents resided in San Bernardino County, it was in the best interest of the children to return the matter to Sonoma County. The petition cited the Southern California Intercounty Transfer Protocol (the transfer protocol) as stating that a case shall not be transferred out less than 90 days prior to the next scheduled review hearing. The petition alleged there were different review hearings scheduled for the three children on September 5, 2018, September 13, 2018, and November 7, 2018. Since the next hearings were less than 90 days away, it was impossible for the San Bernardino County Department of Children and Family Services (CFS) to determine the progress and needs of the family.

On August 15, 2018, the court held the continued transfer-in hearing. The court addressed the section 388 petition asking it to transfer the case back to the Sonoma court. The court acknowledged that CFS had verified the parents' residence, but noted there were review hearings set for September 5, 2018 and September 13, 2018, which were within the timeframe prohibited by the transfer protocol. The court noted there was a modification to the section 388, stating that the Sonoma court was not a part of the Southern California Inter-County Transfer Protocol. County counsel responded that the County Welfare Directors Association had a similar provision regarding a hearing not being scheduled within 90 days from the date of transfer. Furthermore, that protocol provided that a minor in a group home was not permitted to be transferred, and one of the children was in a group home in Sonoma County. Both parents stated that they had been trying to get the matter transferred to San Bernardino County for a while, since they had

both been living there “for some time.” However, the Sonoma court did not properly or timely transfer the paperwork down. County counsel informed the court that all three children were in Sonoma County. Father then explained that he and mother moved to San Bernardino over a year and a half ago, and that the dependency case began when they went to Sonoma to gather some of mother’s belongings from storage. He said the case was based on allegations of medical neglect of mother’s son, F.K.

The court emphasized that the timing of the transfer was the only legal issue before it at that time. The parties referenced some dates to upcoming hearings, and the court noted there was some confusion, and it was trying to review the minute orders from the Sonoma court. The court held a discussion off the record, then came back on the record to state that it was not convinced it had all the minute orders from the Sonoma court. It appeared that some orders were missing, so the court could not determine the exact dates for the next scheduled hearings.

After reviewing the paperwork and hearing the comments, the court stated that it was going to deny the transfer, grant the section 388 motion, and send the case back to the Sonoma court for several reasons. First, the court said it did not believe it had a complete file. It then said it was against the protocol to transfer a case when a child was in a group home in another county. The court noted that the oldest child was in a group home and had special health concerns, and that all three children were placed out of county. It next noted there was confusion about the hearing dates, which left it “in an impossible position to try to decipher the status of each child.” The court stated that it was clear there was at least one hearing date in September. It noted the parents’

statement that they had completed their case plan in Sonoma County, but said it was in no position to hear evidence as to whether that was true, since all evidence would be found in Sonoma County. Furthermore, the court said CFS was not afforded enough time to make an independent decision regarding the “.22 hearing.” The court acknowledged that this case had a significant history, but “[a]ll of that history . . . resides in Sonoma [C]ounty, [which] knows the children and their special needs and their case better than this court.” It then denied the transfer, granted the section 388 petition, and ordered the case transferred back to the Sonoma court.

ANALYSIS

The Court Improperly Rejected the Transfer From The Sonoma Court

The parents argue that the court erred in denying the transfer from the Sonoma court. Respondent CFS concedes, and we agree.

A. Standard of Review

“Much of the discussion concerns the proper interpretation of the provisions of statutes and court rules. These are issues of law that we review de novo.” (*In re R.D.* (2008) 163 Cal.App.4th 679, 684 (*R.D.*)). To the extent we review the court’s decision to transfer the case to the Sonoma court, we review that determination for abuse of discretion. (*Ibid.*)

B. The Court Was Required to Accept the Transfer from The Sonoma Court

California Rules of Court, rule 5.612(a), provides: “On receipt and filing of a certified copy of a transfer order, the receiving court must accept jurisdiction of the case.

The receiving court may not reject the case.” (Italics added.) Accordingly, the court clearly erred in rejecting the transfer.² (*R.D.*, *supra*, 163 Cal.App.4th at p. 684.)

C. The Court Erred in Transferring the Case Back to The Sonoma Court

After the court improperly denied the transfer, it immediately granted the section 388 petition and ordered the case transferred back to the Sonoma court. The parents argue that the court erred in doing so. We agree. Regardless of the substantive merits of the question of which county was the proper one for the children’s case, the court was not authorized to simply send the case back to the Sonoma court.

By denying the transfer from the Sonoma court, the court did not accept jurisdiction of the case. (Cal. Rules of Court, rule 5.612(a); see Welf. & Inst. Code, § 375.) As CFS concedes, the court could not have considered the section 388 petition unless it had accepted the transfer and thereby assumed jurisdiction. (Rule 5.612(a).) Thus, the court erred in granting the section 388 petition and thereby ordering the case transferred back to the Sonoma court.

Furthermore, if the court disagreed with the transfer, there were two ways for it to transfer the case back. We note that it would have had to accept the transfer-in first, either way. The court’s remedy was “to accept the transfer and either to appeal the transfer order, or to order a transfer-out hearing.” (*R.D.*, *supra*, 163 Cal.App.4th at

² We note that the minute order from the July 23, 2018 hearing incorrectly states: “All proceedings are ordered accepted from Sonoma County.” However, at that hearing, the court set the matter for a further transfer-in hearing, pending the verification of the parents’ residence. Then, at the continued hearing on August 15, 2018, the court expressly denied the transfer-in.

p. 685.) A transfer-out hearing “must be *separate* from the transfer-in hearing, because the court is charged with the duty to determine the residency of the child and whether the transfer is in the child’s best interest.” (*Ibid.*, italics added; Cal. Rules of Court, rule 5.610(e), (f).) Here, the court did not hold a separate hearing, and it did not determine whether the best interest of the children would be served by the retransfer. The primary reason the court stated it wanted to transfer the case back to the Sonoma court was that it did not believe it had the complete file.

CFS argues that the improper transfer back to the Sonoma court was harmless error because maintaining the case in Sonoma County was in the children’s best interest, and there was no evidence the parents would have enjoyed a more favorable result in the absence of error. In support of its position, CFS asserts that the children had been receiving services from Sonoma County for over 12 months, F.K. had a heart condition for which he had been receiving services, and the court was missing the progress reports from the parents’ services. CFS further asserts that, even if the Sonoma court transferred the files later, it would not have afforded enough time for CFS to assess the parents for return and would have caused an unreasonable delay in selecting a permanent plan for the children.

Although CFS now claims it was in the children’s best interest to transfer the case back to the Sonoma court, the court did not make such finding. Moreover, the court had no apparent basis to second guess whether the facts justified the Sonoma court’s own finding that transferring the case to San Bernardino County was in the children’s best interest. (See *In re J.C.* (2002) 104 Cal.App.4th 984, 994.) In any event, we cannot

make a best interest determination on the record before us, since it only contains evidence regarding the procedural history of the transfer. Therefore, we reject CFS's claim that the transfer back to the Sonoma court was harmless error.

DISPOSITION

The court's order granting the section 388 motion and transferring the dependency case to the Sonoma court is vacated. The court is ordered to accept the transfer of the case from the Sonoma court.

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McKINSTER
J.

We concur:

RAMIREZ
P. J.

MILLER
J.